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DEPARTMENT OF EDUCATION

34 CFR Chapter III

American Indian Vocational Rehabilitation Services Program;  
Proposed Waivers and Extensions of the Project Periods

CFDA Number: 84.250J

AGENCY: Office of Special Education and Rehabilitative  
Services, Department of Education.

ACTION: Proposed waivers and extensions.

SUMMARY: For 60-month projects initially funded in fiscal year (FY) 2007 under the American Indian Vocational Rehabilitation Services (AIVRS) Program, the Department proposes to waive the regulations that generally limit project periods to 60 months and that restrict project period extensions involving the obligation of additional Federal funds. The Department also proposes to extend the project period until September 30, 2013, for the AIVRS grantees whose awards are scheduled to expire on September 30, 2012. The proposed waivers and extensions would enable the eight AIVRS grantees in the FY 2007 funding cohort to request and continue to receive Federal funding beyond the 60-month limitation contained in the Department's regulations, so long as the grantees are meeting the AIVRS program and other applicable requirements. Further, if the

proposed waivers and extensions are made final, the Department would not announce a new competition in FY 2012 or make new awards in FY 2012.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit all comments on this notice to August Martin, United States Department of Education, 400 Maryland Avenue, SW., room 5049, Potomac Center Plaza (PCP), Washington, DC 20202-7241.

If you prefer to send your comments by email, use the following address: [august.martin@ed.gov](mailto:august.martin@ed.gov). You must include the term "Proposed Waivers and Extensions for AIVRS" in the subject line of your message.

For Further Information Contact: August Martin.

Telephone: (202) 245-7410, or by email:  
[august.martin@ed.gov](mailto:august.martin@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. We are particularly interested in comments on the effect these proposed waivers and

extensions may have on the AIVRS program and on potential applicants for grant awards under any new AIVRS notice inviting applications, should there be one.

Eligible applicants for AIVRS are the governing bodies of Indian tribes (and consortia of those governing bodies) located on Federal and State reservations.

During and after the comment period, you may inspect all public comments about these proposed waivers and extensions for AIVRS in room 5105, (PCP), 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week, except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice of proposed waivers and extensions. If you want to schedule an appointment for this type of aid, please contact the person listed under For Further Information Contact.

Background:

The eight AIVRS grantees, selected based on the 2007 AIVRS notice inviting applications (2007 NIA) published on

March 14, 2007 (72 FR 11851), provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations as authorized by section 121 of the Rehabilitation Act of 1973, as amended (the Act) (29 U.S.C. 741).

The project period for the eight AIVRS grantees is scheduled to end September 30, 2012. Section 121(b)(3) of the Act provides that the Department has the authority to make an AIVRS grant effective for more than 60 months, pursuant to prescribed regulations. For these projects, the Department proposes to waive the requirements of 34 CFR 75.250 and 34 CFR 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds. The Department also proposes to extend the project period for the eight AIVRS grantees from October 1, 2012, through September 30, 2013. The proposed waivers and extensions would enable the eight AIVRS grantees to request and continue to receive Federal funds beyond the 60-month limitation set by 34 CFR 75.250.

The Department makes this proposal, consistent with the Department's commitment to excellence and continuous improvement, because a question was raised by the U.S.

Government Accountability Office (GAO) in a report released on May 9, 2012, concerning the Department's practice for determining eligibility under the AIVRS program. The report is titled Federal Funding for Non-Federally Recognized Tribes, GAO-12-348, and can be found on the GAO Web site at [www.gao.gov/products/GAO-12-348](http://www.gao.gov/products/GAO-12-348).

In the report, the GAO made a finding in which it noted that the Department's interpretation of reservation used in determining eligibility under the AIVRS program raised substantial questions for GAO about the eligibility of State-recognized tribes that are not located on State reservations, but rather are located on a defined and contiguous area of land where there is a concentration of tribal members and in which the tribe is providing structured activities and services, such as the tribal service areas identified in a tribe's grant application. The GAO recommended that the Secretary review the Department's practices with respect to eligibility requirements and take appropriate action with respect to grants made to tribes that do not have Federal or State reservations.

In order to comply with the GAO's recommendation, we believe it is advisable to maintain funding to existing AIVRS projects during the time period the Department is

implementing the GAO recommendation and not to hold a new AIVRS competition in FY 2012. The Department has determined that it is not advisable to announce a new competition under which entities would be expected to have the burden of proceeding through the application process while the Department reviews the eligibility requirements for this program.

Instead, we believe it is preferable in administering the AIVRS program for the Department to review requests for continuation awards from the eight grantees based on the 2007 NIA and, where appropriate, extend the currently-funded projects through September 30, 2013. The maintenance of the status quo while we conduct this review is in the public interest.

If these proposed waivers and extensions are made final for the eight AIVRS grantees selected based on the 2007 NIA , we will base our decisions regarding annual continuation awards on the program narratives, budgets, budget narratives, and program performance reports submitted by these eight AIVRS grantees, and on the requirements in 34 CFR 75.253. Any activities to be carried out during the year of continuation awards would have to be consistent with, or be a logical extension of, the scope, goals, and objectives of each grantee's

application, as approved following the 2007 AIVRS competition. If we publish the proposed waivers and extensions as final, we would award continuation grants to each grantee that is making substantial progress performing its AIVRS grant activities.

The proposed waivers of 34 CFR 75.250 and 34 CFR 75.261(c) (2) and extensions of the project periods, would not exempt the eight AIVRS grantees from the appropriation account-closing provisions of 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded to the eight AIVRS grantees past the five years provided for in 31 U.S.C. 1552(a). Under 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose (31 U.S.C. 1552(b)).

#### Regulatory Flexibility Act Certification

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed waivers and extensions are the eight grantees selected based on the 2007 NIA currently receiving Federal funds and any other potential applicant for the estimated 8 or 9 awards for which there would have been a competition.

The Department certifies that the proposed waivers and extensions would not have a significant economic impact on these entities because the proposed waivers and extensions impose minimal compliance costs to extend projects already in existence, and the activities required to support the additional year of funding would not impose additional regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1995

This notice of proposed waivers and extensions does not contain any information collection requirements.

Intergovernmental Review: The AIVRS program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under For Further Information Contact.



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Dated: July 19, 2012

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Alexa Posny,  
Assistant Secretary for  
Special Education and  
Rehabilitative Services.

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